

**COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO**

**Toni Alkire  
2309 Rowe Ging Rd., SW  
Washington Court House, OH 43160-9687**

**PLAINTIFF,**

**CASE NO.**

**vs.**

**JUDGE**

**Lancaster Colony Corporation  
c/o David M. Segal,  
Statutory Agent  
37 West Broad Street  
Columbus, OH 43215-4177**

**COMPLAINT WITH  
JURY DEMAND  
ENDORSED HEREON**

**DEFENDANT.**

**FIRST COUNT**

1. Plaintiff was employed in the personnel department of defendant's Leesburg, Ohio plant for over sixteen years. At all times, plaintiff's job performance was at least fully satisfactory.

2. In July of 2011, plaintiff was diagnosed with breast cancer and remained under active treatment for breast cancer until July of 2012. Her breast cancer, and her treatment therefore, substantially limited numerous major life activities including, but not limited to, walking, talking, cognitive functions and digestive functions.

3. Plaintiff was terminated from her job, on April 24, 2012, allegedly for violation of defendant's attendance policy.

4. Defendant charged plaintiff, under defendant's attendance policy, with absences necessitated by plaintiff's treatment for and recovery from breast cancer despite plaintiff's repeated requests for reasonable accommodation including, but not limited to, periodic unpaid leave and not charging these absences against defendant's attendance policy.

5. At all times relevant to this lawsuit, plaintiff was disabled and/or perceived to be disabled by defendant as those terms are defined under Ohio law.

6. At the time of her termination, despite her disability, plaintiff was fully able to, and did in fact, safely and substantially perform all functions of her job with only the need for the reasonable accommodations of periodic unpaid leave and not charging disability related absences against defendant's attendance policy.

7. Plaintiff was discharged, in whole or part, because of her actual or perceived disability, defendant's failure to reasonable accommodate that disability, and/or in retaliation for her requests for reasonable accommodation for that disability.

8. Plaintiff was replaced by a non-disabled individual.

9. Defendant's actions are in direct violation of Ohio Rev. Code §4112.02 and Ohio Rev. Code §4112.99.

10. As a result of the willful and malicious acts of defendant, plaintiff has lost (and will continue to lose) wages and fringe benefits and has incurred mental anguish, humiliation, emotional distress and physical pain and illness.

## SECOND COUNT

11. Plaintiff reincorporates the allegations in paragraphs 1 through 10.

12. Plaintiff is an "eligible employee" as defined by 29 U.S.C. §2611(2) of the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §2601 et seq.

13. Defendant is an "employer" as defined by 29 U.S.C. §2611(2).

14. Plaintiff's also suffered from severe anxiety and depression and took periodic leaves from her job because of this and other conditions.

15. Plaintiff's leaves were for a "serious health condition" as defined by 29 U.S.C. §2611(11)(B).

16. Defendant violated 29 U.S.C. §2615(a)(1) by using FMLA qualifying leave as a negative factor in discharging plaintiff including, but not limited to, charging FMLA qualifying absences against defendant's attendance policy in direct violation of 29 C.F.R. §25.220 and retaliating against plaintiff for requesting and/or taking FMLA protected leave.

17. Defendant lacked good faith and/or reasonable grounds to believe that it had not violated the FMLA in its discharge of plaintiff.

18. Defendant's violations of the Family and Medical Leave Act entitle plaintiff, pursuant to 29 U.S.C. §2617(a), to monetary damages which include back pay and benefits, statutory liquidated damages, and attorney fees.

### **THIRD COUNT**

19. Plaintiff reincorporates the allegations in paragraphs 1 through 18.

20. Shortly after plaintiff was terminated on April 23, 2012, defendant destroyed documents in plaintiff's work space relating to her attendance, medical leaves, medical condition, and request for reasonable accommodation due to her disability.

21. At the time the material was destroyed, litigation relating to plaintiff's termination was probable and defendant knew that litigation was probable.

22. Defendant willfully destroyed these documents to disrupt plaintiff's ability to pursue litigation.

23. Defendant's destruction of these documents has disrupted plaintiff's ability to pursue litigation and has thereby damaged plaintiff.

**WHEREFORE**, plaintiff demands judgment against defendant as follows:

- A. A permanent injunction enjoining defendants, and their agents, successors, employees and those acting in concert with them from continuing to violate the rights of the plaintiff;
- B. An order requiring defendant to reinstate plaintiff to her former job and to make plaintiff whole, by appropriate back pay and front pay awards, prejudgment interest, fringe benefits and otherwise.
- C. Liquidated damages in accordance with the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.);

- D. Compensatory damages in an amount in excess of \$25,000.00;
- E. Punitive damages in an amount in excess of \$25,000.00;
- F. Attorney's fees, costs, pre and post judgment interest; and
- G. For any other additional or alternative relief as may be just and proper.

/s/Mark S. Coco

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#### **JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues.

/s/Mark S. Coco

Mark S. Coco